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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/097,243	06/12/1998	JOSEPH S. MANNE	MAN-4	2724

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EXAMINER	
FULLER, RODNEY EVAN	

ART UNIT	PAPER NUMBER
2851	

DATE MAILED: 09/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/097,243	MANNE, JOSEPH S.
	Examiner	Art Unit
	Rodney E Fuller	2851

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1 136(a) In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U S C § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1 704(b)

Status

1)☐ Responsive to communication(s) filed on ______ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3-7,9,11 and 13-20* is/are pending in the application.

4a) Of the above claim(s) ______ is/are withdrawn from consideration.

5)☒ Claim(s) *3-7,9,11,13 and 14* is/are allowed.

6)☒ Claim(s) *15-20* is/are rejected.

7)☐ Claim(s) ______ is/are objected to.

8)☐ Claim(s) ______ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 June 1998* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on ______ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. ______ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U S C §§ 120 and/or 121

Attachment(s)

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on August 8, 2002 has been entered.

Remarks

2. Claims 3-7, 9, 11, 13 and 14 were previously indicated allowable it the Notice of Allowability mailed May 8, 2002. In response to applicant's Amendment, dated August 8, 2002, the examiner acknowledges the addition of claims 15-20. Claims 3-7, 9, 11, and 13-20 are pending.

3. In applicant's Amendment, the applicant indicates that the "purpose of requesting continued examination was to seek claims of a different scope than those that were allowed by the Examiner" and that "...one of the novel aspects of the present invention is that the scent delivery system claimed herein is a simple, portable system." In response, the examiner notes as

routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952). Hence, the examiner

maintains that the "portability" aspect of the applicant's invention is not a patentably distinct feature.

4. Further, the applicant makes the argument (page 5, 3rd paragraph of Amendment) that the present invention is distinguishable from the nasal interface of Martin on two grounds:

a. "First, the nasal interface of the present invention is a passive device which does not control the operation of the system but simply directs scented air to the nose of the user. In contrast, Martin teaches that the nasal interface controls the system by using a breath sensor."

b. "Second, the nasal interface of the present invention is a nose mask, a face mask, a T-joint or a wishbone. Martin, on the other hand, does not teach either one of these four devices, rather, he teaches that the capillary tubes simply end at the nose."

In response, the examiner notes that the claim language of claim 15 does not set forth the argued difference from Martin wherein the present invention is a passive device. Secondly, the examiner acknowledges that Martin does not explicitly teach that the nasal interface is a nose mask, a face mask, a T-joint or a wishbone. However, the examiner maintains that this difference between the claimed invention and Martin would be an obvious design choice. (See *Claim Rejections - 35 USC § 103* below).

Drawings

5. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 5,610,674) in view of Blasdell, et al (US 5,109,839).

Martin (US 5,610,674) discloses all the structure set forth in the claim except wherein the scent delivery system is portable and wherein the nasal interface is "...selected from the group consisting of a nose mask, a face mask, a T-joint and a wishbone." However, the use of a mask for enclosing the nose is routine in the art as is evident from the teaching of Blasdell (US 5,109,839) (see abstract and Figure 1, ref.# 22). Thus, it would have been obvious to one having ordinary skill in the art at the time

dispensing end (Fig. 1, ref.# 5 , Martin) is used with a face mask. The ordinary artisan would have been motivated to modify Martin in the manner described above for at least

the purpose of preventing smells from the outside environment from reaching the user and thus degrade the smell come from the fragrance dispenser. As for the limitation wherein the system is portable, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the limitation wherein a case is "...adapted to be worn by a user on the user's body such that said user is ambulatory when wearing said case and thereby making the system portable," since it has been held that making an old device portable or movable without producing a new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knight (US 5,522,253).

Knight (US 5,522,253) discloses all the structure set forth in the claim except wherein a case is "...adapted to be worn by a user on the user's body such that said user is ambulatory when wearing said case thereby making the system portable." However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the limitation wherein a case is "...adapted to be worn by a user on the user's body such that said user is ambulatory when wearing said case and thereby making the system portable," since it has been held that making an old device portable or movable without producing a new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA

Allowable Subject Matter

9. Claims3-7, 9, 11, 13 and 14 were previously allowed in the Notice of Allowability mailed May 8, 2002.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Hloch (US 2,004,243) discloses a portable system that can deliver a scent from a conduit to a mask. (See column 5, line 28, Hloch)

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney Fuller whose telephone number is (703) 306-5641. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams, can be reached on (703) 308-2847.

Rodney Fuller
Primary Examiner

R.F.

September 5, 2002